



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2004

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
1400 South Lamar Street
Dallas, Texas 75215

OR2004-6625

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 206647.

The Dallas Police Department (the "department") received a request for a list of "all Dallas police officers that have cases pending with Public Integrity, details of those cases and the officers' pictures." You state that the department has released some information to the requestor and you have provided this office with copies of the released information, marked to indicate the information you redacted prior to its release. You claim that this redacted information, as well as the remaining submitted information, is excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of the requested information.¹

First, we address the applicability of section 552.101 of the Government Code to the submitted information. Section 552.101 excepts from disclosure information considered

¹We assume that the representative samples of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected from disclosure by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Family Code § 261.201(a). Because one submitted investigation consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, this information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this investigation, which we have marked, from disclosure under section 552.101 of the Government Code as information made confidential by law.

Next, we note that you have redacted a social security number from the previously released information. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Next, we address the applicability of section 58.007 of the Family Code to information you redacted from the previously released documents. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Family Code § 58.007(c). The information at issue involves an investigation of interfering with public duties by an adult suspect. The information you have redacted involves a juvenile witness, not a juvenile suspect or offender. Therefore, we find that the redacted information is not made confidential under 58.007 and it may not be withheld under section 552.101 on that basis.

Section 552.101 also encompasses information that is protected from disclosure by the common-law right to privacy. Information is protected from disclosure under the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). We agree that the department must withhold the information you have redacted from the previously released documents that pertains to an individual's criminal history under section 552.101 in conjunction with the common law right to privacy.

You also assert that portions of the previously released information are excepted under section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number,

and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note, however, that the protections of section 552.117 only apply to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer); *see also* Gov't Code § 552.024 (establishing election process for section 552.117). The submitted information consists of law enforcement records of criminal investigations. Because the department holds this information in its capacity as a law enforcement agency rather than as an employer, none of it may be withheld on the basis of section 552.117.

However, this information may be excepted under section 552.1175 of the Government Code. Section 552.1175 of the Government Code provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). You have redacted certain information under section 552.117 from the previously released documents. If the officers at issue comply with section 552.1175(2), then the department must withhold the information you have redacted pursuant to section 552.1175 of the Government Code, except where we note otherwise.

Next we address your assertion that section 552.130 is applicable to portions of the submitted information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

We agree that you must withhold the Texas driver's license and vehicle registration information that you have redacted from the previously released information under section 552.130. Additionally, we have marked a small amount of additional information that the department must also withhold under section 552.130.

The previously released documents also contain a bank account number, which you have redacted. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The department must, therefore, withhold the marked bank account under section 552.136.

Finally, we address your argument that a portion of the information you have redacted from the information you have already released, as well as the remaining submitted information, is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the department's Public Integrity Unit investigates allegations of criminal violations involving city employees, and that, upon completion of an investigation, the Public Integrity Unit may file criminal charges against the involved police officer with the Dallas District Attorney's Office. You also state that the submitted information pertains to on-going criminal investigations. Based upon these representations, we conclude that the release of the remaining submitted information, as well as the information you have redacted from the previously released documents, would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, we agree that section 552.108(a)(1) is applicable to this information.

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must generally release the types of information that are considered to be front page offense report information from each pending investigation, even if this information is not actually located on the front page of an offense report or investigation.

In this regard, we note your argument that "front-page" offense report information should not be released from one of the submitted investigations. Specifically, you state that the Public Integrity Unit believes that release of any information related to this investigation would

hamper the covert operation and compromise the safety of the investigating officers used to conduct the covert operation. In Open Records Decision No. 169 (1977), this office recognized that information that would ordinarily be subject to disclosure may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on a showing of "special circumstances." This office considers such "special circumstances" to refer to a very narrow set of situations in which release of the information at issue would likely cause someone to face "an imminent threat of physical danger." Open Records Decision No. 169 at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* Based upon the information provided to this office and upon our review of the information at issue, we find that the identities of the investigating officers should be withheld in this case under section 552.101. *See also* Open Records Decision Nos. 456 at 2 (1987) (statutory predecessor to Gov't Code § 552.108 protected information that, if revealed, might endanger life or physical safety of law enforcement personnel), 211 at 4 (1978) (statutory predecessor protected identities of members of attorney general's Organized Crime Task Force engaged in undercover narcotics work). However, we do not believe that you have shown special circumstances sufficient to overcome the presumption of public access to the remaining basic information from the investigation at issue. Therefore, the remaining basic information contained in this investigation must be released to the requestor.

Additionally, one of the submitted investigations concerns an allegation of a sexual assault. Front page offense report information includes the identity and description of the complainant. *See* ORD 127 at 4. However, information tending to identify a sexual assault victim is protected by common-law privacy and must be withheld pursuant to section 552.101 of the Government Code. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976); Open Records Decision Nos. 393 (1983), 339 (1982). Thus, the department must generally release the types of information that are considered to be front page offense report information from this investigation file, including a detailed description of the offense, regardless of whether such information is actually located on the front page of an offense report. However, identifying information concerning the victim must be withheld pursuant to section 552.101 and common law privacy.²

In summary, with regard to the redacted information in the previously released documents, 1) the social security number you have marked may be confidential under federal law; 2) the department must withhold the information you have marked under section 552.101 in conjunction with common law privacy; 3) if the officers at issue comply with section 552.1175(2), the department must withhold the information you have marked pursuant to section 552.1175, except where we have noted otherwise; 4) the department must withhold the driver's license and vehicle registration information that you have marked, and the

²As we have ruled that the department must withhold the identifying information concerning the victim pursuant to section 552.101 and common law privacy, we need not address your remaining common law privacy arguments for this investigation.

additional information we have marked, under section 552.130; 5) the department must withhold the bank account number under section 552.136; and 6) the department may withhold the information you have marked under section 552.108(a)(1). With regard to the remaining submitted information, the department must withhold the investigation we have marked under section 552.101 in conjunction with section 261.201 of the Family Code. The department may withhold the remaining submitted information under section 552.108(a)(1). However, basic information must be released, with the exception of the identifying information concerning the victim of sexual assault, and the identities of the investigating officers in the pertinent investigation, which must be withheld under section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal line extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/sdk

Ref: ID# 206647

Enc. Submitted documents

c: Ms. Shirley Washington
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(w/o enclosures)